ATTORNEY GENERAL

REPORTS

MICHIGAN

1838-72

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MICHIGAN,

FOR THE YEAR 1838.

BY AUTHORITY.

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REPORT.

ATTORNEY GENERAL'S OFFICE,
Detroit, January 1st, 1839.

To the Legislature of the State of Michigan:

In accordance with the provisions of law, the Attorney General herewith transmits a report of all the official business done by him the past year. The duties of the office during that time have been most varied and important; and the principles involved in the proceedings instituted, have been of great moment, requiring minute investigation and elaborate research. The undersigned has felt strongly his responsibility for the faithful performance of these duties, and he has exerted his best powers so to perform them, that the ends of justice should be obtained and the interests of the State fully protected.

Schedules A, B, and C, hererto annexed, show the proceedings instituted in behalf of the State, which are now pending and undetermined.

By reference to Schedule marked A, it will be seen that there have been twenty-three injunctions against banks, procured at the instance of the Bank Commissioners; all of which have been issued upon bills in chancery, praying for a dissolution of the corporations for alleged violations of law.

The great number of these cases has imposed a heavy additional amount of labor and responsibility upon this office, and there is in truth, enough of this kind of business at the present time, to occupy the whole attention of one individual. The interests also to be affected by these proceedings, are of great magnitude and importance, both to the State and individuals; as the amount of the bills and notes of the banks thus returned, in circulation at the time of the service of the

several injunctions, probably exceed *eight hundred thousand dollars*, and the redemption of this vast amount of liability must mainly depend upon the rigid enforcement of all the provisions of law for the security of the bill holders and creditors of the banks.

The gross frauds which were perpetrated in the organization of a number of these institutions, naturally led to the anticipation that individuals so corrupt in the outset, would not hesitate to throw every obstacle in their power in the way of a proper remedy for the evils they had inflicted. This expectation has proved too well founded; and the greatest difficulty experienced in winding up the concerns of these banks, proceeds from the efforts of persons interested to avoid the effects of those salutary restraints and penalties, which constitute the redeeming features of the act *under* which they were forced into being. It is confidently believed however, that this difficulty will be overcome, and the liabilities of these institutions, in most instances fully redeemed.

Schedule B contains a list of a different class of civil cases, at law and in chancery, in which the State is a party or interested, with a brief statement of the nature of, and the proceedings in each case. And Schedule C comprises a statement of the criminal prosecutions to which I have personally attended.

The remaining paper marked Schedule D, embraces the reports of the District Attorneys, as far as received.

The Revised Statutes have been in operation so short a period, that it has been hardly possible to judge of the practical operation of its provisions in regard to "criminal jurisprudence."

There is one change however, which it is believed "*the proper and economical administration of the criminal law of the State fully warrants and requires.*" This is the substitution of some other provision than that now existing, which requires all criminal prosecutions to be conducted by a prose-

cuting attorney appointed in each county. A rigorous and inflexible administration of the criminal law has ever been deemed of the most vital importance to the good character, the peace, and happiness of every organized community; and to a young State, whose institutions are yet in embryo, with the character of its inhabitants yet undetermined, and at a time, too, when there are unusual stimulants and incentives to crime, it becomes *all important* that *this administration* should not only be *rigid and inflexible,* but that its execution should be vigorous, prompt, and certain.

In order to effect this much desired object, there must be a certainty of *prosecution* as well as of *punishment,* for the guilty violator of the law. It needs no argument to prove that this *certainty* can not be expected unless the services of a competent and experienced, as well as faithful public prosecutor, are ensured. So long as the law requires that all criminal prosecutions shall be in the hands of a public prosecutor appointed in each county, however small, and all compensation is made to depend upon the scanty pittance doled out by the supervisors or commissioners of the county, it is morally impossible that the services of such an officer can be secured; for the lawyer who is competent can be more profitably employed; and few can be found who will serve the public faithfully and intelligently at their own charge.

It is suggested, however, that this object can be effected by an enactment of the Legislature, authorizing the appointment of a Prosecuting Attorney in each judicial circuit, whose duty it should be to be present at the sessions of the court in each county, and attend to the indictment and prosecution of offenders; and for whom an ample remuneration should be secured, either in the shape of fees for the different services rendered, or by an annual salary.

It may perhaps be objected to this proposition, that there is a constitutional difficulty in the way of its adoption. This objection however can hardly be a sound one, from the fact

that the language of the Constitution is: "*that there shall be a prosecuting attorney for each of the respective counties;*" and this would be literally accomplished by the appointment of a Prosecuting Attorney in each circuit to attend to the indictment and prosecution of offenders for each county.

If this should, notwithstanding, be deemed a valid objection, the proposed system might still be adopted as an improvement upon the present; and the duties of the county attorney restricted to the prosecution for petty offenses, the arrest and examination of offenders, and the collection of pecuniary penalties.

Even this, it is believed, would be more economical upon the whole, and tend far more to bring about the great end in view—the *certainty* of prosecution and punishment, than the system now in operation.

All of which is respectfully submitted.

P. MOREY,

Attorney General.

For appendix, see House Documents, Michigan, 1839. State Library.